

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

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WRIT PETITION No.16384 OF 1999

Between:

Trimex Industries Ltd., Formerly Trimex Agencies (P) Ltd.,
Rep. by Mr. A.Kasturi Rangan Off: Obulavari Palle (M),
Mangampet, Cuddapah District, H.O. at Chennai

..... PETITIONER

AND

- 1 The Industrial Tribunal I, Chandravihar, Opp: Exhibition Grounds,
Nampally, Hyderabad
- 2 B. Ravi Kumar S/o B. Kistaiah
R/o Raghava Rajapuram P.O. & Village, Kodur Mandal,
Cuddapah District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a WRIT OF CERTIORARI or other appropriate order or direction in the nature of writ calling for the records resulting in the award dt: 7-1-1999 in I.D.No.35/97 on the file of the Industrial Tribunal-I at Hyderabad and quash the same as erroneous, null void and violative of articles 14 of the Constitution of India in the interest of justice and pass necessary order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.B.NALIN KUMAR

Counsel for the Respondents.: GP for Labour for R1

Mr. G. Ravi Mohan for R2

The Court made the following :

THE HON'BLE Mr. JUSTICE C.V. RAMULU

W.P.No.16384 OF 1999

ORDER:

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This Writ Petition is filed by the Trimex Industries Limited, being aggrieved by the Award passed by the Industrial Tribunal-I at Hyderabad in I.D.No.35 of 1997 dated 7.1.1999.

It is the case of the petitioner-organisation that the 2nd respondent-workman raised a dispute before the Conciliatory Machinery. On failure of the said conciliation, the matter was referred to Government of India, Ministry of Labour, New Delhi. In turn, the Government of India referred the matter to the Industrial Tribunal-I, Hyderabad under Section 10(1) (d) and under Section 2(A) of the Industrial disputes Act, 1947 for adjudication of the following issue:

“Whether the action of the management of M/s Trimax agencies (P) Limited, Mangampet in terminating the services of Sri B. Ravi Kumar with effect from 26.3.1995 is in violation of the Section 25-F of the Industrial Disputes Act, 1947. If so, to what relief the workman is entitled to?”

The 2nd respondent-workman filed a claim petition stating that he was appointed as a clerk in the petitioner-Organisation with effect from 14.7.1989 on a monthly consolidated salary of Rs.750/- and the same was subsequently increased to Rs.1,000/-. He was discharging the duties of clerical nature. He was in fact appointed by duly subjecting him to a selection process. To deprive him of the benefits, the petitioner-organisation introduced a contractor by name G.R. Ramana, but the said contractor was not having any licence. Introduction of the said contractor is nothing but resorting to unfair labour practice on the part of the petitioner-organisation. Petitioner-organisation is maintaining records of the 2nd respondent-

workman along with other regular employees. While so, the services of the 2nd respondent-workman were terminated orally on 26.3.1995 without following the procedure contemplated under Section 25-F of the Act. Therefore, termination of the 2nd respondent-workman was illegal, arbitrary and violative of the provisions of the Industrial Disputes Act.

Before the Industrial Tribunal, petitioner-organisation filed a detailed counter denying the allegations made by the workman and asserting that there was no relationship of employer and employee. The workman-2nd respondent herein was never employed by the petitioner-organisation. He worked under one G.V. Ramana, a contractor. Even otherwise, he has not completed 240 days of service preceding the date of termination so as to invoke the provisions under Section 25-F of Industrial Disputes Act.

On behalf of workman-2nd respondent herein, W.W1 to W.W3 have been examined and Exs.W1 to W9 documents were marked. On behalf of petitioner-organisation, M.W1 has been examined and Exs.M1 to M11 documents were marked. Further, Ex.A1 has been marked through the Advocate-Commissioner.

After considering the material placed on record, the Industrial Tribunal recorded a finding that the action of the petitioner-management in terminating the services of the 2nd respondent-workman is illegal and not justified, and consequently, the petitioner-organisation is directed to reinstate the workman with continuity of service and other attendant benefits.

The learned counsel for the petitioner-organisation submits that the Industrial Tribunal recorded a perverse finding and the evidence relied upon by the Tribunal to arrive at the finding is not acceptable in law. According to the learned counsel, the Award passed by the Industrial Tribunal is arbitrary and illegal.

On behalf of the 2nd respondent-workman, a detailed counter-affidavit has been filed denying the allegations made by the petitioner-organisation and supporting the award passed by the Industrial Tribunal.

I have given my earnest consideration to the respective contentions raised by the learned counsel appearing on either side and also perused the impugned award and other material made available on record.

At the outset I am of the opinion that the Industrial Tribunal has not committed any error calling for interference of this Court exercising jurisdiction under Article 226 of the Constitutional of India.

It is the contention of the learned counsel for the petitioner that the Industrial Tribunal gave a perverse finding to the effect that the workman had been employed by the petitioner-organisation and that he worked continuously for 240 days preceding the date of termination. In support of his contention, the learned counsel drew the attention of the Court to the evidence of M.W1, through whom Exs.M1 to M11 were marked, wherein M.W.1 stated that the 2nd respondent-workman did not work in the petitioner-organisation. The learned counsel submits further that in the Registers produced before the Industrial Tribunal the name of the workman does not find place right from the year 1989 to 1992. Therefore, it is the contention of the learned counsel that the finding of the Industrial Tribunal that the 2nd respondents-workman was working with the petitioner-organisation was arbitrary and illegal.

The Industrial Tribunal to arrive at the finding that the 2nd respondents-workman was working with petitioner-organisation, relied upon the evidence of W.W2, a co-worker, who was admittedly worked in the petitioner-organisation from 18.10.1989 to 14.6.1992. In the cross-examination nothing was elicited from him to show that the 2nd respondent-workman was not at all employed with the petitioner-organisation. Further, M.W1 himself had undertaken to produce the Attendance and Acquittance Registers relating to the year 1995, as was done in regard to previous years, but he did not do so. Therefore, the Industrial Tribunal came to the conclusion that the 2nd respondent-workman worked in the petitioner-Organisation till the date of his termination from service.

The Industrial Tribunal further relied upon Ex.W5 – representation, under which, some contribution was made by the workmen to help a deceased driver working in the petitioner-organisation and the name of the 2nd respondent-workman found a place at Serial No.115 in the said representation which was given to the petitioner-organisation for collecting a day's salary from the workmen as contribution. Apart from this, W.W.3, who is running Petrol Bunk by name Kodur Filling Station, stated that the management of Trimax Industries used to send their persons to get diesel by sending coupons. In view of the material placed before it,

the Industrial Tribunal came to the conclusion that there exists the relationship of Master and Servant and apart from that the 2nd respondent-workman had worked for more than 240 days preceding the date of termination of his service, and thereby invoked the provision under Section 25-F of the Industrial Disputes Act to challenge his termination from service. Therefore, the finding of the Industrial Tribunal can neither be said as perverse nor based on any acceptable evidence. I am of the considered opinion that the Industrial Tribunal has not committed any error warranting interference of this Court exercising jurisdiction under Article 226 of the Constitution of India.

However, there is some ambiguity in the Award passed by the Industrial Tribunal while granting relief to the 2nd respondent-workman which needs a clarification. It is therefore clarified that the 2nd respondent-workman is not entitled to get any back wages for the period he was out of service under the impugned award.

The learned counsel for the petitioner submits further that the Industrial Tribunal had made some passing remarks at Page 12 of the award to the effect that the petitioner-organisation had changed the records like Attendance and Wages Registers to support its version and that it is not in the habit of showing names of all the employees in the Records. Having gone through the material placed on record, I am of the view that the said remarks made by the Industrial Tribunal are not based on any acceptable evidence. Therefore, it is clarified that those remarks need not be taken seriously and the remarks to that effect stand expunged.

With the above clarification, the Writ Petition is dismissed. No order as to costs.

4th August, 2005.

Kgr